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| APPLICATION NO.         | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 10/750,474              | 12/31/2003  | William J. Lacey     | SP03-167            | 9875             |
| 22928                   | 7590        | 10/19/2005           | EXAMINER            |                  |
| CORNING INCORPORATED    |             |                      | REDDING, DAVID A    |                  |
| SP-TI-3-1               |             |                      | ART UNIT            |                  |
| CORNING, NY 14831       |             |                      | PAPER NUMBER        |                  |
|                         |             |                      | 1744                |                  |
| DATE MAILED: 10/19/2005 |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/750,474

Applicant(s)

LACEY ET AL.

Examiner

David A. Redding

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-21 is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/19/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

The indicated allowability of claims 1-11 is withdrawn in view of the newly discovered reference(s) to Shanler et al. and WO 98/27195. Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent publication US 2005/0074873 in view of US Patent publication 2004/0029266 A1.

The patent publication describes a cell culture flask having a flask body consisting of a bottom tray (12), a cover (14) and a cap (16). The flask body includes a vent (94) integrally molded in the cover (14). The vent (94) includes a gas permeable insert (96). The cover (14) includes an aperture (88) having a leak proof septum (90). The reference is silent as to the membrane being hydrophobic. The US Patent publication 2004/0029266 A1 discloses a cell culture flask which includes a hydrophobic gas permeable membrane (see abstract and claim 4). Accordingly, it would have been obvious to one skilled in the art to include the hydrophobic membrane from the Barbera-Guillem publication in the Shanler et al. culture flask in view of the membranes use in the body of a cell culture flask.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/27195.

The WO publication discloses a cell culture flask (figures 1-3) having a rectangular bottom tray (12) with a top (14) and three apertures (20a,22a,24a) leading into the flask (10). At least two of the apertures are shown with gas permeable membranes (20b,24b), each positioned within the apertures positioned in necked portions of the flask.

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The bottom (12) of the tray is equipped with supports (12b) which are equivalent to the claimed "stand-offs". One of the necked portions (20a) includes both a membrane (20b) and a cap (20c). Opposite necked portion (20a), the bottom wall includes a sloped portion (16,16') reading on claim 11. Without an english translation of the publication it is unclear if the reference teaches that the membranes are hydrophobic.

The US Patent publication 2004/0029266 A1 discloses a cell culture flask which includes a hydrophobic gas permeable membrane (see abstract and claim 4). Accordingly, it would have been obvious to one skilled in the art to include the hydrophobic membrane from the Barbera-Guillem publication in the WO 98/27195 culture flask in view of the membranes use in the body of a cell culture flask.

***Allowable Subject Matter***

Claims 13-21 are allowed.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Redding whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-9178. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David A Redding  
Primary Examiner  
Art Unit 1744

DAR